**HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION Nos.10445 OF 2000 AND 22419 OF 2005**

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**COMMON ORDER:**

Both these writ petitions have been filed, the former by the District Social Welfare Officer (Backward Class Welfare), (BCW), Srikakulam District, along with the Warden (hereafter referred to as the employer), Boys Hostel, Palakonda, and the latter by Sri J.Durga Prasad Rao (hereafter referred to as the workman), challenging the award, dated 18.09.1999, passed in I.D.No.56 of 1996 by the Industrial Tribunal-cum-Labour Court, Visakhapatnam.

The workman was engaged as a daily wage worker in Government Backward Class Welfare Boys Hostel (hereafter referred to as the Hostel) from 01.07.1988 to 31.12.1994 and was paid Rs.150/- per month from 01.07.1988 to 31.05.1991, Rs.250/- per month from 01.06.1991 to 31.08.1994 and Rs.400/- per month from 01.09.1994 to 31.12.1994. He was removed from service by the Warden of Boys Hostel, Palakonda, Srikakularm, on 01.01.1995.

Alleging that the termination of services of the workman on 01.01.1995 by the Warden is in violation of the provisions of Section 25 F of the Industrial Disputes Act, 1947 (for short, 'the Act') and that the employer had terminated his services without giving notice or in lieu of notice one month pay or retrenchment compensation, the workman approached the Tribunal under Section 2-A(2) of the Act seeking the relief of reinstatement with back wages and continuity of service. The said application was numbered as I.D.No.56 of 1996 by the Tribunal.

In the said I.D., the District Social Welfare Officer (BCW) Srikakulam, filed a counter denying the allegations of the workman that

he had worked continuously in the Hostel. It was contended that the workman was engaged in service as a daily wage worker and his wages were paid according to the daily wage rules. It was denied that he was removed from service on 01.01.1995. It was contended that he was in service up to 31.01.1994 and that his service was not continuous and he is not entitled to any compensation. It was also contended that he was not entitled to any reinstatement with back wages or continuity of service.

Before the Tribunal, the workman examined himself as WW.1 and one K.Ranga Rao, Junior Assistant working with the Management, was examined as MW.1. The Management marked Exs.M1 and M2. Ex.M1 is the statement showing the number of days on which the workman had worked which shows that he was engaged in service from 01.07.1992 to 31.01.1994 with intermittent breaks and Ex.M2 is staff acquittence register.

The petitioner in his evidence contended that he was working with the Management from 01.07.1988 and that he was removed from service with effect from 01.01.1995, in violation of Section 25F of the Act. He did not produce any appointment letter or termination letter stating that they were not issued to him. He denied that he worked only intermittently. He also denied that he is a contingent employee and he is not entitled to any benefits.

MW.1 deposed that he was working as a Junior Assistant in the Management from 1983; that the workman worked from 01.07.1992 to 31.01.1994 with intermittent breaks and that the workman is not entitled to any relief. He admitted that there is no Attendance Register for the workmen and that he was an N.M.R. The Treasury Bill Book for the period 1989 to 1995, which would show the signatures of the workmen for the payments received by them for the days worked, was not produced.

After considering the oral and documentary evidence, the Tribunal held that the workman was entitled to the relief of reinstatement, but denied the back wages and the relief of regularization as per G.O.Ms.No.212, dated 22.04.1994, which was claimed by the workman.

Aggrieved thereby, the Management filed W.P.No.10445 of 2000 contending that the award is erroneous, and without jurisdiction; that the workman had never worked continuously and his engagement in the Hostel was only as a daily wage worker as such he was paid only daily wages and that the Tribunal has erred in granting the relief of reinstatement.

The workman filed W.P.No.22419 of 2005 contending that the denial of the relief of back wages to him is bad and illegal and that the Tribunal should have granted him the said relief also in addition to the relief of reinstatement.

In W.P.M.P.No.13295 of 2000 in W.P.No.10445 of 2000, this Court granted stay of operation of the award dated 18.09.1999 in I.D.No.56 of 1996 passed by the Tribunal.

Heard the learned Government Pleader for Social Welfare appearing for the Management and Sri K.Bhaskar Rao, learned counsel for the workman.

It is the contention of the workman that he was engaged as a daily wage worker in the Hostel from 01.07.1988 to 31.12.1994 with artificial breaks and his services were terminated with effect from 01.01.1995 in violation of Section 25F of the Act. His grievance is that the said termination was bad and that he was entitled to the relief of regularization of service also apart from reinstatement and back wages.

The Management has failed to produce the Treasury Bill Book for the period from 1989 to 1995, which would show the payment made to the workman and the number of days he worked as his signatures would be taken at the time of making payment of wages to him. No valid reason is given by the Management for non-production of the Treasury Bill Book. Admittedly there is no Attendance Register being maintained by the Management. Ex.M1 is the only statement filed by the Management through MW.1 which indicates that the workman was engaged from 01.07.1992
to 31.01.1994. This is a self serving statement of the Management and unless the Treasury Bill Book which is available with the Management is produced, the contents of Ex.M.1 cannot be taken at its face value. Since the Management has failed to produce the evidence, which is in its custody, to show the number of days which the workman worked, adverse inference is drawn against the Management that if the Treasury Bill Book is produced, it would support the plea of the workman that he worked from 01.07.1988 to 31.12.1994. Since the workman had admittedly put in more than 240 days in a period of 12 calendar months preceding the date of his termination, he shall be deemed to have been in continuous service, as per Section 25B of the Act and is entitled to one month's notice in writing indicating the reasons for his retrenchment and the period of such notice should expire before his termination or he should be paid in lieu of such notice the wages for the period of notice, apart from retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months under Section 25F of the Act. Therefore it has to be held that the termination of his services on 01.01.1995 is in violation of Section 25F of the Act, as no evidence is placed on record by the Management that it has followed the procedure laid down under Section 25F of the Act before terminating him from service.

The question then arises as to the nature of relief which should be granted to the workman. The Tribunal had granted the relief of reinstatement without back wages to the workman. The Management alleges that this cannot be done and he is not entitled to any relief, while the workman contends that he should be granted the relief of back wages and also regularization of his service. In **Bharat Sanchar Nigam Limited v. Man Singh**[1], the Supreme Court held that although an order of retrenchment passed in violation of Section 25F of the Act may be set aside, the relief of reinstatement should not be granted, where the employee in question is a daily wage worker and does not hold a post and is not a permanent employee. It directed that only monetary compensation should be granted to the workman in the interests of justice. In view of this judgment and in view of the fact that the workman is found to have worked from 01.07.1988 to 31.12.1994, a period of 6 ½ years, and he was being paid wages at Rs.400/- per month, I deem it appropriate to grant a sum of Rs.30,000/- as compensation to the workman, in lieu of reinstatement and back wages. In my opinion, the Tribunal has rightly denied the relief of regularization of service to the workman. The Supreme Court in **Secretary, State of Karnataka v. Uma Devi**[2] held that the relief of regularization should not be granted to workmen whose appointment has not been made in accordance with the rules as that would allow backdoor entry into service in violation of the rule of reservation and other service rules as to qualification.

In the result, W.P.No.10445 of 2000 filed by the Management is dismissed and W.P.No.22419 of 2005 filed by the workman is partly allowed and the relief of compensation of Rs.30,000/- is granted to the workman to be paid by the Management in substitution of the relief of reinstatement granted to the workman by the Tribunal. There shall be no order as to costs.

The Miscellaneous Petitions, if any, filed in this writ petition shall stand closed.

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**M.S. RAMACHANDRA RAO, J**

07.09.2012
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[1] (2012) 1 SCC 558
[2] (2006) 4 SCC 1